

APPEAL NO. 032719
FILED DECEMBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 16, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the ninth quarter, and that the respondent (carrier) is not relieved from liability because of the claimant's alleged failure to timely file a Request for Benefit Review Conference (TWCC-45). The hearing officer's determination on the timely filing of the TWCC-45 has not been appealed and has become final pursuant to Section 410.169.

The claimant appealed, contending that her doctor told her that her surgery is not completely healed; that she should not do any heavy tasks; and that she is still taking pain medication. The carrier responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant contends that she has met the requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) in that she has made a good faith effort to obtain employment commensurate with her ability to work by having a total inability to work in any capacity. The hearing officer's determination that the claimant's unemployment was a direct result of her impairment was not appealed.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer commented that the reports of the treating doctor do not specifically explain how the claimant's injury causes a total inability to work and that there is a functional capacity evaluation and another doctor's report, although subsequent to the qualifying period, which show "that the claimant has some ability, although limited, to work during the qualifying period." The hearing officer found that the claimant was "not unable" to perform any type of work in any capacity. Our review of the record indicates the hearing officer's determinations are supported by the evidence.

We have reviewed the complained-of determination and conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge